



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P. O. Box 19848
Washington, D.C. 20036

Winnifred L. Noel-Charles,
Complainant,

v.

Michael Chertoff,
Secretary,
Department of Homeland Security,
Agency.

Appeal No. 0120071501

Agency No. HS06CIS002183

DECISION

Complainant filed a timely appeal with this Commission from the agency's decision dated December 29, 2006, dismissing her complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e *et seq.* Upon review, the Commission finds that complainant's complaint was properly dismissed pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely EEO Counselor contact. In her complaint, complainant alleged that she was subjected to discrimination on the bases of race (African-American) and national origin (Trinidadian) when she was not selected for a Supervisory Adjudication officer position in May 2005, and again in January 2006.

The record discloses that the alleged discriminatory event occurred on January 2006, but complainant did not initiate contact with an EEO Counselor until June 26, 2006, which is beyond the forty-five (45) day limitation period. On appeal, complainant has presented no persuasive arguments or evidence warranting an extension of the time limit for initiating EEO Counselor contact. The Commission notes that complainant filed Freedom of Information Act Requests (FOIA) in August, November, and December 2005 and argues that information she received on June 6, 2006 gave her a reasonable suspicion of discrimination. However, if complainant's first FOIA was in August 2005 regarding the May 2005 non-selection, it was already beyond the time limit for contacting a counselor. Further, the December 2005 FOIA request was before she learned of her non selection in January 2006. Accordingly, the agency's final decision dismissing complainant's complaint is affirmed.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0701)

The Commission may, in its discretion, reconsider the decision in this case if the complainant or the agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) within thirty (30) calendar days of receipt of this decision or within twenty (20) calendar days of receipt of another party's timely request for reconsideration. *See* 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. *See* 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. *See* 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0900)

You have the right to file a civil action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, filing a civil action will terminate the administrative processing of your complaint.

RIGHT TO REQUEST COUNSEL (Z1199)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. *See* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File A Civil Action").

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

APR 05 2007

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Winnifred L. Noel-Charles
123 Oak Ridge Rd
Hopewell Jct, NY 12533

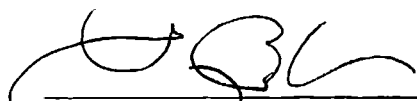
Kent Arthur, ESQ
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Daniel Southerland, Director
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Department of Homeland Security
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Judy Maltby, Chief
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Department of Homeland Security
Bishop Henry Whipple Federal Building
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Twin Cities, MN 55111-4007

APR 05 2007

Date



Equal Opportunity Assistant